



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2018-0675; FRL-9989-61-Region 6]

Air Plan Approval; Texas; Reasonably Available Control Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is converting its September 22, 2017 conditional approval of revisions to the Texas State Implementation Plan (SIP), addressing Oxides of Nitrogen (NO_x) Reasonably Available Control Technology (RACT) for the TXI Operations, LP (Texas Industries, Inc., TXI) cement manufacturing plant in Ellis County, to full approval. We are approving an August 21, 2018 SIP submittal which satisfies Texas' commitment which was the basis for our conditional approval. We are taking this action in accordance with the Clean Air Act (CAA, the Act).

DATES: The final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2018-0675. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air Planning Section (6MM-AA), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30am and 4:30pm weekdays except for legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar (6MM-AA), telephone (214) 665-2164, e-mail shar.alan@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document “we,” “us,” and “our” refer to the EPA.

- I. Background
- II. Final Actions
- III. Incorporation by Reference
- IV. Statutory and Executive Order Reviews

I. Background

The background for this action is discussed in detail in the November 14, 2018 (83 FR 56770) Proposal.¹ The November 14, 2018 (83 FR 56770) action proposed approval of TCEQ’s August 21, 2018 submittal as a revision to Texas SIP addressing NO_x RACT for the TXI cement manufacturing plant in Ellis County as a part of its Dallas Fort Worth (DFW) 2008 8-Hour Ozone National Ambient Air Quality Standards (NAAQS) SIP update. The August 21, 2018 SIP submittal contained both an Agreed Order (AO) concerning TXI and a SIP narrative update for DFW NO_x RACT. The Technical Support Document (TSD)² also provided a detailed description and rationale for the proposed action.

The public comment period closed on December 14, 2018, and we received no adverse comments. We received two comments, including one from TCEQ, that were supportive of our

¹ See the Proposal, document ID No. EPA-R06-OAR-2018-0675-0001 at [Regulations.gov](https://www.regulations.gov).

² See the TSD, document ID No. EPA-R06-OAR-2018-0675-0002 at [Regulations.gov](https://www.regulations.gov).

action. We received one additional comment that was also generally supportive of our proposed action “if chemical knowledge for community safety is taken into consideration.” The commenter’s discussion of chemical hazards, however, is outside the scope of our November 14, 2018 (83 FR 56770) Proposal taken under the CAA. We acknowledge that the Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986 was created to help communities plan for chemical emergencies and requires industry to report on the storage, use and releases of hazardous substances to federal, state, and local governments. EPCRA requires state and local governments, and Indian tribes to use this information to prepare their community from potential risks.

II. Final Actions

We find that TCEQ’s August 21, 2018 SIP submittal satisfies its obligation under the September 22, 2017 (82 FR 44320) conditional approval and are converting the September 22, 2017 (82 FR 44320) final rule to full approval. We are also approving the August 21, 2018 SIP submittal, including the AO as a source-specific NO_x RACT revision to the SIP. Our approval will incorporate these changes into the SIP for Texas.

III. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the revisions to the Texas source specific requirements as described in the Final Actions section above. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 6 Office (please contact Mr. Alan Shar, (214) 665-2164, shar.alan@epa.gov for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA

into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. If a portion of the plan revision meets all the applicable requirements of this chapter and Federal regulations, the Administrator may approve the plan revision in part. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices that meet the criteria of the Act, and to disapprove state choices that do not meet the criteria of the Act. Accordingly, this final action approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this final action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA;
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994); and
- Does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 14, 2019.

Anne Idsal,
Regional Administrator, Region 6.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52-APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS–Texas

2. In §52.2270:

a. In paragraph (d), the table titled “EPA-Approved Texas Source-Specific Requirements” is amended by adding an entry for “TXI Operations LP (Texas Industries, Inc., TXI), Kiln #5, Ellis County, Texas” at the end of the table.

b. In paragraph (e), the second table titled “EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP” is amended by:

i. Removing the entry “Conditional approval of NO_x RACT finding for the Martin Marietta (formerly Texas Industries, Inc., or TXI) cement manufacturing plant under the 2008 8-Hour ozone NAAQS” and

ii. Adding an entry titled “NO_x RACT finding under the 2008 8-Hour ozone NAAQS” at the end of the table.

The additions read as follows:

§ 52.2270 Identification of plan.

* * * *

(d) * * *

EPA-APPROVED TEXAS SOURCE-SPECIFIC REQUIREMENTS

Name of Source	Permit or Order Number	State Effective Date	EPA Approval Date	Comments
* * * *				
TXI Operations LP (Texas Industries, Inc., TXI), Kiln #5, Ellis County, Texas	Agreed Order No. 2017-1648-SIP	08/21/18	[Insert date of publication in the Federal Register] [Insert Federal Register citation].	DFW 2008 8-Hour ozone standard

(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or non-attainment area	State submittal/ effective date	EPA approval date	Comments
* * * *				
NO _x RACT finding under the 2008 8-Hour ozone NAAQS.	Collin, Dallas, Denton, Tarrant, Ellis, Johnson, Kaufman, Parker, Rockwall, and Wise Counties, TX	8/21/2018	[Insert date of publication in the Federal Register] [Insert Federal Register citation].	DFW as Moderate and Serious, also converts conditional approval 09/22/17, 82 FR 44322 to full approval.

[FR Doc. 2019-03096 Filed: 2/21/2019 8:45 am; Publication Date: 2/22/2019]